ages in his favour even without loss or damage, but where there is no loss or damage such judgment will be for nominal damages only. However this statement is made in the context of breach of contract and of tortious invasions of legal rights. The grant of an injunction which is subsequently discharged does not per se give a right to damages. As Stephen J said in the *Air Express Ltd* case[2] at p 319:

> But a plaintiff who sues for an injunction and obtains interlocutory relief, giving an undertaking to the court as the price of that relief, commits no wrongful act, no breach of contract or of duty when, at the trial, he fails to obtain any perpetual injunction.

(2) Where damage is shown but its amount is not sufficiently proved. The problem is simply one of proof, one not of absence of loss but of absence of evidence of the amount of loss. Our present case is clearly one of absence of loss.

In the case before us, the plaintiffs (F&N) failed in their action against the defendants (YHS). In such an inquiry pursuant to an undertaking, the purpose, as we have said earlier, is to determine the existence and the extent of damages if any. Having rejected YHS's basis of claim and found that they would in fact have made no loss, we must, for the purpose of this inquiry, treat YHS as unsuccessful plaintiffs. It would therefore not be correct to award nominal damages.

It has been emphasized that the ordering of such an inquiry would be at YHS's risk as to costs. In the light of our findings, the only appropriate order to make is that YHS bear the costs of the assessment before the assistant registrar and of the appeals therefrom.

Our orders

(1) The appeal by F&N is allowed in that no damages are due and payable by F&N to YHS.

(2) The respondents, YHS, are to pay the taxed costs of the appellants, F&N, in respect of:
  (a) the assessment before the assistant registrar;
  (b) the appeal before P Coomaraswamy J; and
  (c) the appeal before us.

(3) The deposit of $2,500 paid in as security for costs by the appellants is to be paid out to them.

Appeal allowed.

Solicitors: *Allen & Gledhill*; *Cooma Lau Loh & M Karthigesu.*

Reported by *PS Ranjan*

MALAYSIAN REPORTS

Government of Malaysia v Rohaya bte Mohd Majzub & Ors

SUPREME COURT (KUALA LUMPUR) – CIVIL APPEAL NO 546 OF 1987
HASHIM YEOP A SANI AG CJ (MALAYA), MOHAMED YUSOFF SCJAND AJAIB SINGH J
29 NOVEMBER 1988

Labour Law – Revision of salaries in the public service – Complaint of anomaly – Award of Public Services Tribunal – Whether applicable to respondents who were not complainants before Tribunal – Respondents not similarly situated as other public officers to whom award applied – Salary scale of respondents – Public Services Tribunal Act 1977, s 15(1) & (5)

The Public Services Tribunal dealt with a complaint of anomaly by some broadcasting assistants who were appointed before 1 January 1976 and made an award. The respondents were not among them. The government implemented the recommendation of the Tribunal in respect of those who had complained of the anomaly but did not apply the second part of the award to the respondents who were appointed after 1 January 1976. The learned trial judge relied on s 15(1) of the Public Services Tribunal Act 1977 and said that the government were bound to implement the Tribunal's recommendation on the respondents (see [1988] 3 MLJ 302). The government appealed.

Held, allowing the appeal:

(1) Apart from the fact that the second part of the Tribunal's award should be regarded, in so far as concerned the respondents, only as an observation of the Tribunal, the respondents are bound by their acceptance of the offers of appointment and any change in their conditions of service or scheme of salary should be negotiated with the government. It is not proper for the court to interfere with the contractual right between the respondents and the government.

(2) Section 15(5) of the Public Services Tribunal Act 1977 only requires the application of the award to other public officers similarly situated as the complainant whose complaint resulted in the award. The learned trial judge was wrong in interpreting ss 15(1) and 15(5) of the Act as he did.

(3) The court should not make the declarations asked for in that the respondents be given the B3 salary scale of the Cabinet Committee Report. The court should not usurp the functions of the Tribunal or the government in matters of salary scales and conditions of service.

Legislation referred to
Public Services Tribunal Act 1977 s 15(1), (5)

KN Segara (Senior Federal Counsel) for the appellant.
LP Gengadharan (*N Mahalingam* with him) for the respondent.

Appeal from: Originating Summons No R8-31-21-87 (High Court, Kuala Lumpur)

Cur Adv Vult

Hashim Yeop A Sani Ag CJ (Malaya) (delivering the judgment of the court): The respondents were appointed on various dates between 1980 and 1981 as broadcasting

assistants. They became so employed by the government by virtue of letters of offer issued by the government to them and accepted by them.

The Public Services Tribunal ('the tribunal') handed down an award on 12 August 1981 following a complaint of anomaly by one G Sundaraju and 29 others. The respondents were not among them.

After the award the government implemented the recommendation of the tribunal in the first part of the award to Sundaraju and his 29 colleagues who were appointed before 1 January 1976 but did not implement the second part of the award to the respondents who were appointed after 1 January 1978.

The learned judge relied on s 15(1) of the Public Services Tribunal Act 1977 ('the Act') and said that the government was bound to implement the tribunal's recommendation on the respondents. We are unable to agree with the the learned judge on his interpretation of s 15(1) of the Act. Apart from the fact that the second part of the tribunal's award should be regarded, in so far as concerned the respondents, only as an observation of the tribunal, the respondents are in our opinion bound by their acceptance of the offers of appointment and any change in their conditions of service or scheme of salary should be negotiated with the government. We do not think it is proper for the court to interfere with the contractual right between the respondents and the government.

We also do not agree that s 15(5) of the Public Services Tribunal Act should be applied in this case because s 15(5) of the Act only requires the application of the award to other public officers similarly situated as the complainant which resulted in the award.

Finally the respondents came to the court asking for declarations that they be given the B3 salary scale of the Cabinet Committee Report with effect from the date of employment and that they are entitled to the relief in the Public Services Tribunal award. Issuing of the declaration is discretionary and in a case like this where the claims concerned conditions of service and salary scales in the government service, the court should not rush into making a declaration. The court should not usurp the functions of the tribunal or the govenment in matters of salary scales and conditions of service.

The appeal is accordingly allowed with costs.

Appeal allowed.

Solicitors: *Genga, Maha, Wong & Co.*

Reported by *Prof Ahmad Ibrahim*

Mukhtiar Singh Gill & Ors v Atma Singh Gill

HIGH COURT (SEREMBAN) – CIVIL SUIT NO 22-97-86
MUSTAPHA HUSSAIN J
3 SEPTEMBER 1988

Civil Procedure – Bill of costs – Taxation – Getting-up fees – Whether allowable in interlocutory proceedings – Rules of the High Court 1980, O 59 Part IV item 26 – Courts of Judicature Act 1964, s 3

Words and Phrases – 'Cause' – Rules of the High Court 1980, O 59 Part IV item 26

The plaintiffs applied for and were granted an interim injunction to restrain the defendant from holding the election of office-bearers of a Sikh temple of which the defendant was the pro tempore chairman. The defendant then applied to set aside the interim injunction and the court subsequently allowed the application, with costs to be taxed. At the review of taxation before the senior assistant registrar, the plaintiffs disputed the item on getting-up fees, contending that since the suit was not fixed for trial and the hearing confined to applications in interlocutory proceedings, getting-up fees cannot be allowed in principle. The plaintiffs submitted that the word 'cause' in item 26 under the scale is confined to original proceedings and does not cover any interlocutory proceedings.

Held, dismissing the application:

(1) Reading the definitions of 'cause', 'matter' and 'action' in s 3 of the Courts of Judicature Act 1964, the word 'cause' includes any action in a civil proceeding including applications at any stage of a proceeding. It is abundantly clear that the interlocutory application by the defendant to set aside the injunction comes within the meaning of 'cause'.

(2) Reading the headnote to Part IV under O 59 of the Rules of the High Court 1980, it is also clear that item 26 means 'preparation for trial or hearing' whether in open court or otherwise. The defendant is entitled to the getting-up fees.

Legislation referred to
Courts of Judicature Act 1964 s 3
Rules of the High Court 1980 O 59 Part IV items 26 & 27, Part X para 1(2)

Leow Shin Fong for the plaintiffs.
Joginder Singh for the defendant.

Cur Adv Vult

Mustapha Hussain J: The five plaintiffs herein had filed a writ on 19 February 1986 and at the same time filed a summons-in-chambers applying for an interim injunction to restrain the defendant from proceeding to hold and conduct the annual general meeting of the devotees of the Sikh Temple, Seremban, for the purpose of electing office-bearers. The defendant was at the material time the pro tempore chairman who was to conduct the election of office-bearers.

The interim injunction was granted on 22 February 1986, stopping the election of office-bearers. This was followed by an application filed by the defendant on 30 March 1986 (encl 10) to set aside the interim injunction